

APPEAL NO. 031212
FILED JUNE 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 9, 2003. The hearing officer decided that the respondent's (claimant herein) compensable injury of _____, extended to and included lumbar degenerative disc disease. The appellant (carrier herein) files a request for review, arguing that this determination was contrary to the evidence. The carrier argues that the evidence established that the claimant suffered a lumbar strain on _____, but did not establish, as found by the hearing officer, that the claimant's _____, injury aggravated the claimant's preexisting degenerative lumbar disc disease. The claimant responds that the hearing officer correctly found that his injury aggravated his degenerative lumbar disc disease and should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Injury means damage or harm to the physical structure of the body and such diseases or infections as naturally resulting therefrom, or the incitement, acceleration, or aggravation of any disease, or infirmity or condition, previously or subsequently existing, by reason of such damage or harm. Gill v. Transamerica Ins. Co., 417 S.W.2d 720 (Tex. Civ App.-Dallas 1967, no writ); *see also* McCartney v. Aetna Casualty & Surety Co., 362 S.W.2d 838, 839 (Tex. 1962); Matson v. Texas Employer's Insurance Ass'n, 331 S.W.2d 907, 908 (Tex. 1960). In addition, it has been held that the aggravation of a preexisting condition, including the aggravation of an ordinary disease of life, in the course and scope of employment may be a compensable injury in its own right. Texas Workers' Compensation Commission Appeal No. 941577, decided January 9, 1995; Texas Workers' Compensation Commission Appeal No. 950446, decided May 8, 1995.

We have held that the issue of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does

not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was conflicting evidence and it was the province of the fact finder to resolve these conflicts. Applying the above standard of review, we find no legal basis to overturn the hearing officer's decision, which was supported by the claimant's testimony and medical evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL RAY OLIVER, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge